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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULE 36(a),
ARIZONA RULES OF PROTECTIVE
ORDER PROCEDURE

Supreme Court No. R-17-0023

**Petitioner's Reply to the
CIDVC regarding Rule 36(a),
Arizona Rules of
Protective Order Procedure**

The CIDVC commented on my petition to amend Rule 36(a), offering its own amendments instead. I reply.

INTRODUCTION

I'm glad that the CIDVC recognizes my reasoning for amending Rule 36(a). And I'm glad that the CIDVC is willing to amend the ARPOP to correct the problem raised in *Savord* that continues today.

However, I don't see how the CIDVC's alternative language – at three places no less – corrects the problem. Rather, the alternative language continues to promulgate the same unclear language that caused me to file my instant petition in the first place. That is, the alternative language does not fix the problem.

DISCUSSION

First, the CIDVC suggests amending three Rules that talk about the

Contents of Petitions to say that petitions must allege certain acts "that will be relied on at an *ex parte* or a contested hearing."

How does that make it clear to judges that plaintiffs can only prosecute allegations raised at petition? (Answer: It doesn't. From a plain reading of this language, a plaintiff could rely on allegations made at petition and still sneak in new allegations at hearing.)

What could be clearer than the Court of Appeals' own language, that "The court must limit the scope of the hearing to the allegations in a petition"? (Answer: Nothing.) I don't understand the CIDVC's reluctance to add this simple, clear language. (Hopefully it's not NIH.¹)

Second, even if the CIDVC's proposed changes were clear, the CIDVC says "rather than duplicate the rule in two different parts of the ARPOP" it would be better to duplicate it in three parts!

Since three is more than two, I don't understand the CIDVC's logic here.

More fundamentally, there is no duplicate rule. I suggested amending only one Rule, Rule 36(a). Nor do I know what "two different parts" the CIDVC is talking about. (It did not say.)

Look, the main purpose of the CIDVC's sweeping revision to the ARPOP years ago was to streamline the ARPOP so that users could easily find the information they were looking for. So that judges, lawyers and pro se litigants

¹ "Not Invented Here." The unwillingness to acknowledge or value the work of outsiders. (Here, someone outside the court's sanctioned legal profession.)

alike could jump to the pertinent part of the ARPOP for the sub-procedure at hand. There's only one Part in the ARPOP titled "Contested Hearings," and that is Part VIII, which contains Rule 36. There is no duplicate part.

The point is, no one is going to read the entire ARPOP when the only information they're interested in is the procedure for a Contested Hearing. So even if there were clear language in Rules 23, 25 and 26 that limited the scope of hearings to allegations in petitions, the limitation will never be noticed during a Contested Hearing. ("Out of sight, out of mind.") It needs to be stated in the Rule about Contested Hearings where it's timely.

Having said that, I have no objection if the Court wants to add the sentence "The court must limit the scope of the hearing to the allegations in the petition" to Rules 23, 25 and 26 also. Such an addition might help mitigate violations of defendants' 14th Amendment rights at *ex parte* hearings.

CONCLUSION

For the reasons above, I cannot endorse the CIDVC's alternatives to my proposed amendment to Rule 36(a). I request that the Court simply add language from its own Court of Appeals to Rule 36(a) so that the 14th Amendment rights of defendants are protected during Contested Hearings for Protective Orders.

SUBMITTED this 29th day of June 2017.

By /s/ Mike Palmer